

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	x	
JOSEPH LABICK,	:	ECF CASE
	:	
Plaintiff,	:	07 CV 6846 (SCR)
	:	
- against -	:	<b>DECLARATION OF</b>
	:	<b>RAYMOND J. HERZOG, JR.</b>
CONSOLIDATED EDISON COMPANY	:	
OF NEW YORK, INC.,	:	
	:	
Defendant.	:	
_____	x	

I, Raymond J. Herzog, Jr., declare that the following is true and correct:

1. I am employed as a Benefits Supervisor for defendant Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"). I have held this position since January 1, 1987. I am familiar with the facts and circumstances of this case, and submit this Declaration in support of Con Edison's motion to dismiss the action.

2. The Level Income Option feature of the Consolidated Edison Retirement Plan ("Plan") was adopted by the Company's Board of Trustees in 1996, effective for management employees retiring on or after December 1, 1996. A copy of the newsletter communicating the material terms of this Plan modification is attached as Exhibit A to this Declaration. This newsletter was distributed to Con Edison management employees on or about August 7, 1996.

3. Joseph Labick was a Con Edison management employee who retired effective August 1, 2000. On or about July 19, 2000, he completed and signed an election form for the 100% Joint and Surviving Spouse Annuity Option/Level Income Option, on which he elected the Level Income Option with a pension reduction at Age 62. A copy of that form is attached as Exhibit B to this Declaration.

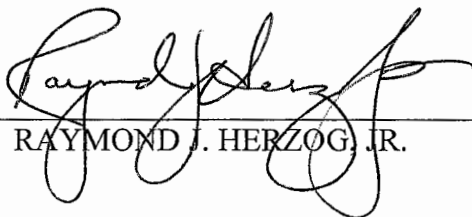
4. Although the Level Income Option took effect in 1996, the next Summary Plan Description (SPD) was not printed until 2002. The description of the "Level Income Payment Option" set forth on the first two pages of Exhibit A constitutes the terms of the Level Income Option in effect at the time of Joseph Labick's retirement. These terms did not materially change between the time of Mr. Labick's retirement and the distribution of the 2002 SPD. A copy of the section of the 2002 SPD, which describes the terms of the Level Income Option applicable to married participants such as Mr. Labick, is attached as Exhibit C to this Declaration.

5. Attached as Exhibit D to this Declaration is a copy of the New York State Department of Health Certification of Birth contained in Mr. Labick's benefit file, which indicates that his date of birth is August 3, 1944.

6. Attached as Exhibit E to this Declaration is a copy of the pages of the SPD describing the Plan's administrative procedures for participants to ask questions, submit claims, and request full and fair review by the Plan Administrator of any denied claim.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 11, 2007.

  
RAYMOND J. HERZOG, JR.